

ARGUMENTS/REMARKS

Applicants would like to thank the examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and these papers are provided in response thereto.

Claims 1-32 and 34-54 remain in this application. Claim 33 has been canceled.

Claim 52, 53 stand rejected under 35 U.S.C. §102(e) as being anticipated by Fraccaroli (U.S. Pat. App. 2004/0002348). Claims 1-4, 10-15, 29-32 and 34-47 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fraccaroli (U.S. Pat. App. 2004/0002348) in view of Herz (U.S. 6,571,279). The remaining claims were rejected under 35 U.S.C. §103(a) as being unpatentable over Fraccaroli and Herz in view of various other additional cited references. For the following reasons, the rejections are respectfully traversed.

Regarding the rejection of claims 1-32 and 34-54, a Declaration under 37 CFR 1.131 Establishing Prior Invention was previously executed by the inventors and was filed with the Office on 19 June, 2007 and supplemented by the filing of 23 July, 2007. This declaration states, and provides documentary evidence to support, that the invention, as reflected in the amended claims provided in this response, was within the possession of the inventors prior to the date of May 19, 1999. Thus, the invention predates the filing dates of both Fraccaroli (having a priority date of August 24, 1999) and Herz (having a filing date of May 19, 1999). Please note that Herz is a CIP of earlier filed applications, and thus it cannot be assumed that the disclosures of these earlier filed applications support the teachings cited by the Examiner. Accordingly, neither Fraccaroli nor Herz are properly considered prior art.

In a telephone interview with the Examiner, the various reasons for rejecting the above reference declaration was discussed on January 22, 2008. The Examiner agreed during that interview that the declaration provided sufficient evidence of conception of the invention prior to the cited references, but the Examiner argued that evidence of due diligence in reduction to practice was also required.

Accordingly, two additional supplemental declarations under 37 CFR 1.131 are being filed with this response. The First Supplemental Declaration establishes diligence on the part of the inventors in proceeding with their invention and providing materials related to their invention to a Swiss patent agent for the purpose of preparing a patent application. The Second

Supplemental Declaration establishes diligence on the part of the patent agent in preparing and filing a patent application for the invention on behalf of the applicant. In combination, these supplemental declarations provide sufficient evidence of diligence in the constructive reduction to practice of the invention, whose conception is evidenced by the first declaration (already filed in this case), by filing Swiss patent application PCT/CH99/00463, publication number WO0124551, on September 29, 1999. This Swiss application is the priority document for the instant U.S. patent application. It is indisputable that the time from conception supported by the original declaration (and accepted by the Examiner) to the filing of this Swiss patent application is a reasonable amount of time for preparing such a patent application, and the declarations provide ample evidence that the invention was not abandoned in this time period, but that the invention was diligently pursued by the inventors. Accordingly, both prior conception and due diligence being shown by the declarations filed in this case (providing sufficient factual evidence as specified in MPEP 2138.06), the cited references therefore cannot be considered prior art in this case, and thus the outstanding claims are patentable over the references for the reasons discussed in the Amendment filed on October 31, 2007.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. P&TS-33835.

Respectfully submitted,

PEARNE & GORDON, LLP

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By: / Robert F. Bodi /

Robert F. Bodi, Reg. No. 48,540

1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114-1484
(216) 579-1700